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421676—41

In the Supreme Court of the United States

OCTOBER TERM, 1941

No. 630

CHARLES C. HOBART, DOING BUSINESS AS THE HOBART CABINET COMPANY, PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

OPINIONS BELOW

The opinion of the court below (R. 143–144) is unreported. The findings of fact, conclusions of law, and order of the National Labor Relations Board (R. 46–59) are reported in 25 N. L. R. B., No. 80.

JURISDICTION

The decree of the court below (R. 144–145) was entered on June 5, 1941. A petition for rehearing filed by petitioner (R. 147–151) was denied on June

25, 1941 (R. 153). The petition for a writ of certiorari was filed on September 20, 1941. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925, and Section 10 (e) and (f) of the National Labor Relations Act.

QUESTION PRESENTED

The sole question is whether there is substantial evidence to support the Board's finding that petitioner violated Section 8 (1) of the Act.

STATUTE INVOLVED

The pertinent provisions of the National Labor Relations Act are set out in the Appendix, *infra*, p. 8.

STATEMENT

Upon the usual proceedings, the Board issued its findings of fact, conclusions of law, and order (R. 46–59). The facts found by the Board and shown by the evidence may be summarized as follows:[1]

When petitioner's employees commenced to organize late in December, 1939 (R. 49; 71–72, 77), Charles Hobart, proprietor of the Hobart Cabinet Company, shortly thereafter held individual interviews with almost all of his 131 employees (R. 50,

[1] In the following statement, the references preceding the semicolons are to the Board's findings and the succeeding references are to the supporting evidence.

51; 130, 122). In those talks he stated the objection to collective bargaining that through wage increases it would adversely affect the company's competitive position, with the result of decreased business and employment (R. 51, 54–55; 121–122, 73–74, 79, 99); yet, while these interviews were still in progress, Hobart inaugurated a general wage increase ranging from 3 to 6 cents per hour (R. 51; 123–124). He informed one employee during the interviews that he would prefer to "deal with the fellows direct" (R. 50; 80). Later, petitioner's foreman Brown sought to induce employee Yenger, a leader in the organizational movement, to substitute individual for collective bargaining with respect to Yenger's wages (R. 53–54; 100–101).

The Board found (R. 54–55) that petitioner's questioning of the employees coincidentally with their first organizational efforts, coupled with petitioner's veiled threats of lay-offs if they persisted in collective action, constituted a direct deterrent to the employees' exercise of rights protected by the Act. The Board further found (R. 55–56) that the granting of the general wage increase within a week of petitioner's disclaimer of ability to do so was designed to forestall the employees' movement toward self-organization by eliminating the major incentive for such employee action, and that the attempt to bargain individually with Yenger was made for the same purpose.

Thereafter, on the same day that American Federation of Labor membership application cards were distributed among the employees for the first time (R. 51; 84), petitioner conducted a poll in the plant upon the question: "Do you wish to bargain for your rate of pay? Or would you rather have things as they are now with wage increases when I can justify it and chance of extra later on?" (R. 52; 27, 124–125, 133, 81, 83, 90, 100, 105). This move, Hobart conceded at the hearing, "might have [had] a shade" of intent to discourage the formation of a union (R. 55; 126). The Board found (R. 55) that, in the circumstances, the vote was an interference with the employees' union activities; it also concluded that Hobart's action in posting in the plant, subsequent to the filing of charges against him, a notice stating that his prior activities were not to be construed as an interference with the employees' collective bargaining rights (R. 127), was not "adequate to remedy the effect of the unfair labor practices found" (R. 57).

Finally, Cruikshank, a union leader, testified that foreman Arthur warned him that if Hobart "found out who signed or who started the union, he was going to lay them off or fire them" (R. 52; 105); there was also evidence that Arthur, after questioning Carey, another prominent employee organizer, as to his union membership, observed

that the employees "could join the union if they wanted to, but he didn't think it would do them much good if Mr. Hobart had to pay a dollar or a dollar and a quarter an hour, because he could not afford it, and he would just shut the shop up" (R. 53; 94, 92). In view of Arthur's admitted supervisory status (R. 112) the Board disregarded petitioner's claim that Arthur's remarks were unauthorized, and held petitioner chargeable therefor (R. 53).

The Board concluded that petitioner had engaged in unfair labor practices within the meaning of Section 8 (1) of the Act (R. 57, 58); its order required petitioner to cease and desist from its unfair labor practices and to post notices (R. 57–59).

On September 20, 1940, petitioner filed in the court below a petition to review and set aside the Board's order. The Board answered, requesting enforcement of its order. On May 8, 1941, the court handed down its opinion (R. 143–144), and on June 5, 1941, entered its decree (R. 144–145), enforcing the Board's order. Petitioner's motion for rehearing (R. 147–148), filed June 7, 1941, was denied on June 25, 1941 (R. 153).

ARGUMENT

1. Petitioner's contention (Pet. 10) that the Board's findings of unfair labor practices are not

supported by substantial evidence presents no question of general importance. In any event, the evidence summarized in the Statement (*supra*, pp. 2–5) affords abundant support for the challenged findings.

2. Petitioner's claim (Pet. 10–11) that the Board and the court below erred in holding him accountable for the anti-union behavior of foreman Arthur is both immaterial and without merit. It is immaterial because the petitioner himself engaged in a variety of conduct violative of Section 8 (1); this conduct alone furnished adequate foundation for the Board's order. The claim is without merit because under the decisions of this Court petitioner is answerable for foreman Arthur's anti-union conduct——which was entirely consistent with that of petitioner[2]——despite the absence of authorization or ratification. *International Ass'n of Machinists* v. *National Labor Relations Board*, 311 U. S. 72; *H. J. Heinz Co.* v. *National Labor Relations Board*, 311 U. S. 514.

[2] In view of this consistency between the conduct of petitioner and foreman Arthur, petitioner cannot bring this feature of the case within the supposed principle (Pet. 14) that "in the absence of any" anti-union policy on his part, an employer is not chargeable on account of the unauthorized coercive statements of a foreman; and by the same token there is no warrant for petitioner's seeming claim of conflict (Pet. 15) with cases said to apply such a principle.

CONCLUSION

The petition presents no question of general importance, and there is no conflict of decisions; it should, therefore, be denied.

Respectfully submitted.

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